

ISSUE DATE: April 25, 1996

DOCKET NO. P-5110/C-95-872

ORDER REFERRING MATTER TO OFFICE OF ATTORNEY GENERAL FOR  
ENFORCEMENT PROCEEDINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint against Trans  
National Telephone, Inc. Filed by the  
Department of Public Service Concerning the  
Unauthorized Provision of Service as a  
Telecommunications Carrier in Minnesota

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**PROCEDURAL HISTORY**

On October 21, 1994, Mid-Com Communications Inc. (Mid-Com) informed the Commission by letter of a concern regarding its ongoing negotiations with Trans National Telephone, Inc. (TNT). Mid-Com, which contemplated purchasing TNT's Minnesota customer base, was concerned that TNT did not appear to hold a certificate of authority to provide service in Minnesota.

At the Commission's request, the Department of Public Service (the Department) initiated an investigation of TNT's business practices in Minnesota. The Department found that TNT began reselling long distance service in Minnesota in January, 1993, and stopped providing service in Minnesota after the June, 1994 billing cycle, when Mid-Com took over TNT's customer base.<sup>1</sup> During the time it provided service, TNT did not hold a certificate of authority in Minnesota.

On January 12, 1996, the Department filed comments recommending that the Commission find that TNT violated Minn. Stat. § 237.74, subd. 12 by knowingly and intentionally providing long distance service in Minnesota without a certificate of authority. The Department further recommended that the Commission refer the matter to the Office of the Attorney General (OAG) for possible penalty proceedings, pursuant to Minn. Stat. § 237.74, subd. 11.

After the initiation of the Department's investigation, TNT, now known as Business Discount Plan, Inc. (BDP), filed an application for authority to resell long distance service in Minnesota.<sup>2</sup> BDP later withdrew the application.

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<sup>1</sup> The Commission approved Mid-Com's acquisition of TNT's Minnesota customer base in a October 23, 1995 Order in Docket No. P-3087, 5110/PA-94-989.

<sup>2</sup> The application was assigned to Docket No. P-5145/NA-95-76.

On March 1, 1996, BDP filed a letter explaining the facts behind its unauthorized service and short-lived application for authority. BDP stated that it had largely filed its application in order to assure the Commission that it did not wish to evade its jurisdiction. Since the filing of the application, the Commission established a separate docket to investigate BDP's provision of service. BDP also developed a business plan which did not target Minnesota as a state to serve. For these reasons, BDP now no longer felt the application was necessary and wished to withdraw it.

In the March 1 letter, BDP did not dispute that it had provided Minnesota intrastate service during 1993 and early 1994. The Company noted that at the time of the transfer of its customer base to Mid-Com, BDP had fewer than 200 customers in Minnesota and did not intend to solicit or serve Minnesota customers in the future. BDP stated that it had cooperated in the Department investigation, fully responded to information requests over the course of 15 months, and reimbursed the Commission for its part of the expenses of investigation. In view of these facts, BDP asked the Commission to accept its request to withdraw its application, and to conclude that enforcement action is unnecessary.

On April 16, 1996, the matter came before the Commission for consideration. At the meeting, a representative of BDP stated that it had been aware that certification is necessary when it served Minnesota customers without certification in 1993 and early 1994. BDP stated that the unauthorized service was due to an employee's mistake rather than any company intent or policy. BDP noted that it serves approximately 25,000 customers in 25 different states; the approximately 200 Minnesota customers it served at the time it transferred its customer base to Mid-Com had simply "fallen through the cracks." BDP asked that the Commission reject the Department's recommended finding of a knowing and intentional statutory violation.

### **FINDINGS AND CONCLUSIONS**

Under Minn. Stat. § 237.471, referral to the OAG for enforcement proceedings requires a Commission finding that the party knowingly and intentionally violated relevant statutes, Commission Orders, or rules. BDP argues that its actions do not constitute a knowing or intentional violation because it extended unauthorized service to Minnesota customers through mistake and inadvertence. The Department counters that the sole relevant question is the Company's intent to provide service under circumstances which violate the certification statute. Once this intent to serve is established, any mitigating circumstances advanced by the Company may be relevant in future penalty proceedings but do not remove the violation.

The Commission has previously addressed the issue of the knowing and intentional nature of violations by telephone companies. In a 1995 decision<sup>3</sup> finding that Kantel Communications intentionally and knowingly violated Commission Order requirements, the Commission explained the meaning of "knowing and intentional" for purposes of referral under the

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<sup>3</sup> In the Matter of a Request by Kantel Communications, Inc. for Authority to Transfer Assets to Peoples Telephone Company, Inc., Docket No. P-1621,1466/PA-93-1184, ORDER DENYING RECONSIDERATION AND ALLOWING ADJUSTMENT OF REFUND.

enforcement statute:

In Claude v. Collins, 507 N.W. 2d 452, 457 (Minn. App. 1993), aff'd in part, 518 N.W. 2d 843 (Minn. 1994), the Minnesota Court of Appeals drew from criminal law to determine if public officials who violated the Open Meeting Law without knowledge of the law nevertheless acted knowingly and intentionally. The Court held that an intentional act is committed when “the actor has a purpose to do the thing or cause the result specified” and the actor has “knowledge of those facts that are necessary to make the actor’s conduct criminal.” The Court held that the public officials who violated the Open Meeting Law committed an intentional violation of that law, notwithstanding their ignorance of the law’s provisions.

Order at p. 6.

Applying the same criteria to the facts in the present case, the Commission finds that BDP knowingly and intentionally violated Minnesota statutes when it provided uncertified service to Minnesota customers in 1993 and 1994. For approximately a year and a half, the Company intentionally performed the specific actions necessary to resell long distance service to Minnesota customers and to bill those customers for its service. During the time it provided the uncertified service, it knew that certification was required by Minnesota law. The Company’s actions were thus a knowing and intentional violation of the certification requirements of Minn. Stat. § 237.74, subd. 12.

The Commission has carefully considered BDP’s arguments regarding inadvertence and mistake. The Commission agrees with the Company that it did not act with malice when it served Minnesota customers without a certificate of authority. As the Commission stated in the Kantel decision, however, a company that knowingly and intentionally violates statutes, Orders, or rules, albeit without malice, will be referred for enforcement proceedings. The Commission agrees with the Department that the mitigating circumstances offered by the Company may appropriately be considered in the context of future penalty proceedings.

The Commission finds that Business Discount Plan, Inc. knowingly and intentionally violated Minn. Stat. § 237.74, subd. 12 by providing unauthorized service to Minnesota customers in 1993 and 1994. The Commission will refer this matter to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. §§ 237.74, subd. 11 and 237.461.

### **ORDER**

1. The Commission finds that Trans National Telephone, Inc., now known as Business Discount Plan, Inc., knowingly and intentionally violated Minn. Stat. § 237.74, subd. 12 by providing unauthorized service to Minnesota customers in 1993 and 1994.

2. The Commission refers this matter to the Office of Attorney General for enforcement proceedings pursuant to Minn. Stat. §§ 237.74, subd. 11 and 237.461.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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